

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

2005 OCT 20 A 11: 07

Romil Rafaela Estrella Taveras,

Plaintiff

-vs-

Carolyn Paiewonsky Taveras,

Defendant.

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Case No. 05-CV-00867

Judge Marbley

Magistrate Judge Kemp

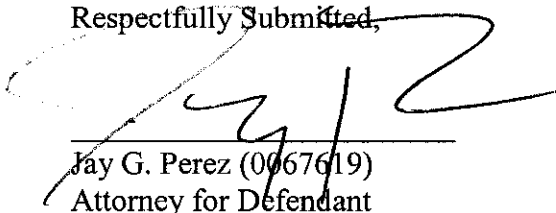
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST DIVISION, COLUMBUS

DEFENDANT'S MOTION TO SET ASIDE THE ORDER OF OCTOBER 17, 2005

Now comes, Defendant, Carolyn Paiewonsky Taveras, by and through counsel and respectfully submits this Motion to Set Aside the Order of October 17, 2005.

The reasons for this Motion are fully explained in the Memorandum in Support attached hereto and incorporated herein as if fully rewritten.

Respectfully Submitted,


Jay G. Perez (0067619)
Attorney for Defendant
5 E Long Street, Ste 404
Columbus, Ohio 43215
Phone 614-221-9222
Fax 614-221-9208

MEMORANDUM IN SUPPORT

Defendant, Carolyn Paiewonsky Taveras, was served with a Complaint for Declaratory and Injunctive Relief. Defendant's address on the complaint was 22 Westerville Square, Apt. 218, Westerville, Ohio 43081. At this time Defendant received a summons stating that she was to Answer the Complaint within 20 days. There is no mention of any hearing dates. (Exhibit 1)

After receiving said Complaint, Defendant, retained Undersigned counsel. Undersigned timely filed an Answer to the Complaint and simultaneously filed a Motion to Dismiss based on lack of jurisdiction of this Court.

Undersigned was surprised to receive a phone call from the Court on Monday, October 17, 2005, inquiring as to the whereabouts of his client, as apparently there was hearing that was scheduled for that morning. This was a surprise to both Undersigned and Defendant.

Undersigned after looking into this matter further discovered disturbing information. The hearing of October 17, 2005 was Show Cause Hearing that was scheduled due to the fact that Defendant failed to appear for a hearing on September 29, 2005. Consequently, due to her failure to appear at the Show Cause Hearing on October 17, 2005, Defendant was found in contempt of court and ordered to pay Plaintiff's counsel.

However, very importantly what must be noted is that Defendant was never served with a summons to appear for a September 29, 2005 hearing. Additionally, she was never served with a summons to appear for the Show Cause Hearing for October 17, 2005. Both of these hearings were scheduled prior to Defendant retaining counsel and therefore, Undersigned did not receive notice of these hearings either.

Disturbingly, Plaintiff had Defendant served with the summons to appear at a different address than where the Complaint was served. Plaintiff knew the address on the summons was

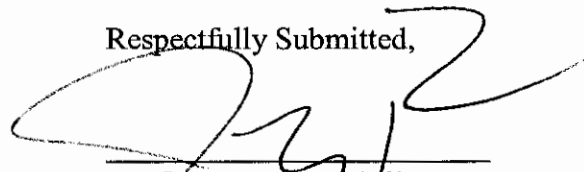
not accurate. Plaintiff is well aware of the residence of Defendant because he listed it on the Complaint and service was perfected there. Therefore, why would Plaintiff use a different address for the summons to appear?

Defendant is concerned that Plaintiff is attempting to paint a picture that is completely inaccurate. Plaintiff, in his Complaint stated that Defendant never appeared for any court dates in the Dominican Republic. This is not accurate. Now it appears as if Plaintiff is attempting to mislead this Court with regards to Defendant's character by providing false address information which has lead to missing court dates, which has in turn lead to findings of contempt.

The court records and docket in this matter clearly indicate that Defendant was not served with a summons to appear on September 29, 2005 and additionally was not served with a summons to appear on October 17, 2005. The Court can not hold someone in contempt for failing to appear for a matter in which they never received notice. It is obvious by the retention of counsel, and timely filing a response to the Complaint that Defendant is not "blowing off" this matter and has made every effort to fully comply with statutory requirements etc. Therefore, it begs the question as to why Defendant would intentionally not appear for a court date. It is clear the reason that she did not appear was because she did not have notice.

WHEREFORE, Defendant prays this Honorable Court set aside the Order of October 17, 2005, finding Defendant in Contempt of Court because she clearly had no notice of aforementioned hearings.

Respectfully Submitted,



Jay G. Perez (0067619)
Attorney for Defendant
5 E Long Street, Ste 404
Columbus, Ohio 43215

CERTIFICATE OF SERVICE

I, hereby certify that a true and accurate copy of the foregoing was sent via regular US mail on this the 19th day of October 2005 to Plaintiff's attorney, E. Dennis Muchnicki, at 5650 Blazer Parkway, Dublin, Ohio 43017.



JAY G. PEREZ 0067619

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern District of Ohio

Romil Rafael Estrella Taveras

V.

SUMMONS IN A CIVIL CASE

Carolyn R. Paiewonsky Taveraz

CASE NUMBER: C2 05 867

TO: (Name and address of Defendant)

Carolyn R. Paiewonsky Taveraz
22 Westerville Square
Apt. 218
Westerville, Ohio 43081

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

E. Dennis Muchnicki
5650 Blazer Parkway
Dublin, Ohio 43017

an answer to the complaint which is served on you with this summons, within 20 days days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

James Bonini, Clerk

CLERK

D. Spencer
(By) DEPUTY CLERK

DATE

9/60/05

